

Citizens Jury on Compulsory Third Party Insurance

Final Report

29th October 2017

Preamble

The ACT CTP Citizens Jury was tasked to answer the following question:-
“What should be the objectives of an improved CTP scheme to best balance the interests of all road users”.

The Jury was exposed to an extensive body of evidence, including thousands of pages of documentation, input from witnesses ranging from prepared statements to question and answer sessions with subject matter experts from many organisations participating in the current scheme. There was opportunity to hear from past claimants, both successful and unsuccessful.

The Jury process was contentious at times with jurors representing a wide variety of values and perspectives. The process facilitators supported the jury to work through and discuss many issues. The jury was able to consider any evidence we thought was important or pertinent in understanding and designing the objectives.

The jury has come up with 6 overarching objectives which broadly reflect the perspective of the jury. The scheme designers have been directed to use these objectives as the guiding aims for creating alternative models for the CTP scheme.

The Jury looks forward to part two of this process where we will consider and evaluate the models provided by the Stakeholder Reference group.

About the Jury

We are a diverse group of citizens representing the ACT community. We were selected to participate through a random process, and agreed to volunteer in Canberra's first citizen's jury. We range in age from high school students to retirees, and are from different socio-economic backgrounds.

We are here for the deliberation of an improved CTP scheme in the ACT, as we feel strongly about our democratic duty to our community.

We listened to expert consultants, stakeholders, witnesses, people affected by the scheme, and public submissions to the 'Your Say' website over 4 days. We used social media tools (BaseCamp) to access in-depth documents pertaining to CTP schemes from other states and to interact and discuss views with each other.

A stakeholder reference group will use our objectives and recommendations to develop several CTP models. The jury will reconvene in March to deliberate these models, and select the one that best represents the interests of the broader ACT community.

Executive Summary

The jury collaborated on a large number of issues and identified the following as objectives. Some were contentious and did not have consensus. These were prioritised using polling, as below:

Jurors' Priorities for the system:

Values: 1 being a very low priority; 10 being a very high priority.

1. Early access to medical treatment, economic support and rehabilitation services

All jurors approved of this objective | 84% assessed it to be at least an 8/10 priority

2. Equitable cover for all people injured in a motor vehicle accident

All but 2 jurors approved of this objective, and 1 abstained. | 82% assessed it to be at least an 8/10 priority

3. A value for money and efficient system'

All jurors approved of this objective | 54% assessed it to be at least an 8/10 priority

4. Promote broader knowledge of the scheme and safer driver practices

All jurors approved of this objective | 38% assessed it to be at least an 8/10 priority

5. Implement a support system to better navigate the claims process

All but 1 juror approved of this objective | 36% assessed it to be at least an 8/10 priority

6. A system that strengthens integrity and reduces fraudulent behaviour.

All but 1 juror approved of this objective | 26% assessed it to be at least an 8/10 priority

Early Access

Timely and early access to treatment, rehabilitation and economic loss for eligible people.

Meeting treatment, rehabilitation and economic needs as soon as possible and then as they occur will improve outcomes for people injured in a traffic accident. This is important because research demonstrates that early access improves medical and rehabilitation outcomes. Early access also decreases secondary victimisation such as stress and economic uncertainty, allowing people's lives to continue as normally as possible despite their accident. This would remove the incentive to delay treatment and rehabilitation to maximise a lump sum payment, and may help make the culture of the scheme more people- and wellness-focused. Moving away from a lump sum will also account for any variabilities such as improvement or deterioration of injuries.

The evidence for this was drawn primarily from John Walsh, Ian Cameron and other witness presentations to the jury. Please refer to their data such as *The Acute Whiplash Report*. We anticipate that treatment and rehabilitation costs would increase as a percentage of overall cost in the scheme. We believe this is important because, as a jury, we have been shocked at the slow delivery times to receive financial assistance and the adverse impact that this has on people's recovery and ability to return to normalcy.

Our unresolved tensions are that early access may reduce the accuracy of injury assessment and may not account for injury deterioration. It may increase over-servicing or over-treatment if doctors recommend unnecessary treatment. This objective does not account for who should be covered or whether the system differentiates between at fault, not at fault, minor or major injuries. We feel that general damages, while important, do not need to be addressed as quickly and are not discussed in this objective.

Key terms.

- General damages includes pain and suffering, compensation for lost quality of life, and compensation for lost future earning capacity.
- Timely and early access means meeting costs as as soon as possible and as they arise.

- Economic needs include lost wages and economic support for carers who have been injured and cannot fulfil their usual caring responsibilities. We understand that this may be a percentage of actual wages with a maximum cap, and would make some allowance for non-wage earners.
- Rehabilitation means returning people to their pre-injury state as far as possible. This may include assistance in returning to work, assistance with reasonable adjustments or retraining.
- Treatment means medical treatment, including for mental health. We anticipate that this would cover all reasonable evidence-based treatment costs, with reasonable costs to be determined by medical professionals.
- Secondary victimisation is the extent to which the system makes the injured person's injuries or general situation worse. Participating in the process can worsen someone's medical and psychological outcomes through adding stress and economic strain.

Notes for scheme designer:

- We envisage that early access to benefits for medical and economic needs could be achieved through a statutory system/table of benefits.
- We have not defined a time limit on when or if early access would change to an alternate system. The amount of time for which 'early access' benefits are received should be determined based on precise costing.

Value for money and efficiency

The CTP scheme should be value for money for the ACT community, and should be efficient.

The current CTP scheme doesn't cover all those injured in motor vehicle accidents; but increasing the efficiency of the scheme, we can cover more people.

The scheme should provide early access to medical treatment to reduce long term medical costs. We've heard that delays in medical treatment often cause the initial injury to become worse, which leads to increased costs and worse medical outcomes.

Administration of the scheme should be streamlined and efficient.

The scheme should also measure treatment success rates to ensure that the best outcomes are achieved for the injured, and reduce over-servicing. We heard from witnesses that some claimants sought multiple and continued treatments that were not producing results, especially in the areas of allied health and therapeutic treatment. We learnt this is important because if no one is measuring medical success rates no one knows where improvements can be made. Treatments should provide measurable results in patients.

The scheme should provide transparency of where premiums are being spent. We heard from witnesses that under the current scheme the breakdown of medical and legal costs is unclear.

A full itemised and annual breakdown of all the schemes costs, should be provided. (for example: medical costs, legal costs, insurer profits, investigatory costs etc)

People need to know where their money is being spent so scheme administrators, politicians, insurers and medical professionals can make informed decisions about where those funds should be directed.

For example, currently a medical service provider can have two prices for the same medical procedure: one price for a regular patient, and one price for an

insurance claimant. We feel there should be more clarity around why this is the case. One possible solution would be to have the AMA scheduled fee to become the guide price for medical procedures.

The scheme should provide a dispute resolution system that leads to early resolution of complaints. We heard from witnesses that disputes who was at fault often dragged proceedings out, increasing the costs for all those involved and delaying medical treatment and compensation.

EXTRA NOTE ADDED AFTER PRESENTATION (because we hadn't dealt with it before the presentation):

A single juror would like noted:

'That banning of lawyers advertising (across media) for personal injury claims should be adopted in the ACT as it has been in NSW'.

The whole jury: had consensus on not including this in the report.

Encourage people to drive safely

Prevent motor vehicle accidents and increase awareness about the purpose of the scheme

We want to prevent motor vehicle accidents in Canberra and for people to understand the purpose of the scheme is to help people recover from injury.

We want to adopt strategies that prompt people to drive safely in order to prevent and reduce motor vehicle accidents. We particularly want to address the high level of whiplash injuries in Canberra,

Why is it important:

We want to educate the community that the real purpose and value of the scheme is to look after the welfare of injured people.

We know this is important because any accident has a serious toll on people's health and welfare and the cost to the community. We care about people's welfare and want a safe Canberra community.

It is important that people are aware of the objectives of the scheme and how it works because getting treatment early will help them recover physically and emotionally and will have a better outcome for themselves and their families.

One of the key messages about the scheme should be that it will take care of injured people and meet their commitments. We should use compelling stories about how the system supports injured people to recover.

Once someone has had an accident, it should be easy for them to know how to make a claim. The first point of contact after an accident is an opportunity to provide early advice about accessing their entitlements and getting care and guidance.

We want the community to expect the scheme will get them back to the best possible position. We expect the scheme design will make it easy for people to claim and be supported emotionally, rather than expect that litigation is necessary.

We recommend the Government develop a range of education strategies that influence people's willingness and ability to drive safely and educate them about their rights within the scheme. There is an opportunity to introduce the new scheme to the Canberra community with an education program.

We have a number of observations to support this objective.

We heard from a number of witnesses, including the insurers and actuaries, that there are a large proportion of soft tissue (eg whiplash) injuries in Canberra (about half of annual claims) and would like to reduce these injuries.

We have heard from academic witnesses that it is possible to influence safer driver behaviour. There are examples of safety techniques that can prompt people to drive safely on the road, such as arrows on the road to indicate safe distances between cars or rumble strips on the road.

We have heard from claimants that they were unaware of how the current scheme operates. The claimants felt the CTP scheme was very complex and didn't know what was covered. Some were shocked to learn they are not covered and thought they needed a lawyer to navigate the scheme.

We have heard that it is important for people's recovery to have early treatment so we want people to understand how the scheme works. There is evidence from academics and insurers that recovery rates in Victoria are superior to those in NSW because it has early intervention.

We have heard from the actuary that Tasmania has lower premiums but similar benefits because it has a different culture regarding CTP.

Other Comments

We note an uncertainty about how this objective would be funded, but it is supported by the jury as a whole. It could be linked to other government funding and it is important because it supports the overall objectives of the scheme.

We support Government initiatives to adopt modern motor vehicle technologies.

We recommend a name change to the scheme to better reflect its purpose. How about Community Accident Care.

Notes to Scheme Designer:

We recommend the Government develop a range of education strategies that influence people's awareness to drive safely and educate them about their rights within the scheme. There is an opportunity to introduce the new scheme to the Canberra community with an education program.

Some ideas follow for education strategies and promotional activities .

We could introduce education about the scheme during driver training programs and at point of car registration; this could include a online self-assessment quiz.

There could be a pamphlet available from the police, accidents, Access Canberra or hospital staff. The hospital system could send information about motor vehicle accidents to the regulator or insurer who contacts the injured person to provide guidance about the scheme.

As well as providing the community with information regarding the number, extent and impact of claims, possibly including case studies from those injured, we could put in place a feedback process about individual claims to people involved in an accident. This could foster a sense of responsibility within the community, as word of mouth got out.

Who and what is covered/equitable

We propose to cover, in an equitable manner, any persons injured as a result as of a motor vehicle accident in the ACT.

Everyone, regardless of whether at-fault or not-at-fault, should be covered in terms of health care and treatment. Compensation for loss of earnings should be limited to a defined amount. Non-at-fault drivers with serious injuries would have access to litigation under the common-law system.

Equitable means fair, just, unbiased, reasonable, timely and impartial.

For the purpose of determining injuries they are classified as either minor or serious. Minor includes injuries such as soft-tissue and short term psychological trauma. Serious injuries are defined as permanent and likely to diminish the quality and well being of a claimant(s) life. Serious injuries would be determined using the common-law system and take into consideration contributory negligence.

We know it is important because under the current scheme some people who are injured as the result of a motor vehicle accident are not covered. For example, when someone suffers an unexpected medical episode and crashes their car, they are not currently covered, nor is anyone who they may injure as a result of the accident. The Citizens Jury was also moved by witnesses who shared their stories about instances where they were deemed to be 'at-fault' and were limited to a \$5,000.00 cap to cover medical injuries only. Additionally, the Jury was moved by stories where witnesses were subjected to years' of lengthy delays as a result of insurance companies and legal professional's arguing to determine who is 'at-fault': this process had a profound, psychological impact on those witnesses.

We are responding to the concerns of the community, who through surveys expressed a strong desire to move to a no-fault system. The expressions also indicated a desire to move to a hybrid common law/statutory system. Change to a non-fault scheme provides immediate care after an accident.

Statutory provisions apply for all accidents deemed to be a minor and/or non-serious injuries. The threshold to determine the first opportunity to resort to common law benefits needs to be determined and considered by actuaries at a later stage.

Note: With relation to income support, the extent of cover would be limited for drivers determined people who are convicted of a criminal offence (jury did not reach consensus on this point).

The scheme needs to recognise non-wage and carer responsibilities.

We would like to see models developed for further consideration. The issue of limited benefits was controversial.

Support navigating the system.

The CTP scheme should ensure that claimants have access to advocacy and dispute resolution.

Why is it important:

This objective is important because it would empower claimants to participate in the CTP scheme in a fully informed way. This is also important to address the specific vulnerabilities that are experienced by potential claimants, which include matters as diverse as cultural and linguistic differences, acquired brain injuries, age and other variables.

Clarification:

A possible method for this to be achieved, is apportioning some of the premium to the regulator for the establishment of independent advocates, tasked with helping claimants to navigate the scheme. This remit could include providing information, giving support in completing forms etc and/or full representation of the individual. Broadly, the types of professionals doing this might include support workers, case workers, social workers and/or lawyers. It should be noted that it would need to be possible for individuals who are capable of - and wish to - navigate the system themselves or with minimal support to have the choice to do so. This would assist in containing costs. The system would need to interact effectively with other support services such as Health Care Interpreters and the like; not all of the support services would need to be directly provided by or funding under the scheme.

We envisage this being a proactive system, designed to provide as early as practicable the information and guidance about what steps need to be taken.

Ideally at every point of contact in the process of recovering from an accident the potential claimant should be informed of their access to this advocacy. This could include automated prompts built into routine reporting / record keeping systems used by (for example) the police and general practitioners (e.g. Medical Director).

An alternative way of providing independent advocates may involve using the insurers to train independent people who understand the system.

Stories:

We have heard through the jury process that frequently people had no service provider inform them of the scheme and the steps to take or who to talk to, in order to claim their entitlements. e.g. many miss the 28 day cutoff for claiming the no-fault \$5000 for medical expenses currently available.

A Tension: It is vital that the advocates are independent from the scheme itself.

Interpretations:

Advocacy : Could be as simple as providing information and support, helping to fill out forms, inform of options and recommendations for how to proceed through the scheme.

Proactive: The scheme should prompt the service providers to inform potential claimants of the existence of their access to support within the scheme.

Notes to scheme designers:

In relation to dispute resolution mechanisms, the jury recognised that several different mechanisms may be appropriate. These include review of decisions, alternative dispute resolution (such as tribunals) and recourse to the courts. Each has its own costs that were unclear to the jury.

Scheme design and fraud

Objective

A system that strengthens integrity and reduces fraudulent behaviour.

Importance

This system needs to be hard to abuse, takes away opportunistic behaviour while allowing for genuine claims to be considered. This system needs to consider aspects such as Prevention, Detection, Reporting, Analysis and Consequences.

This is important because we want to ensure that appropriate benefits are provided to genuine claimants. The current arrangements are prone to abuse, and there are opportunities to commit fraud. This includes where third parties (such as providers) may be complicit in fraud.

Definitions

'Fair' means integrity in the system

'Genuine entitlement' means not fraudulent

'Fraud' means behaviour which seeks to gain a benefit by dishonest means

Evidence

Stories from stakeholders such as police and insurers. These parties have explained cases of people taking advantage of the current system, and specific vulnerabilities that may be taken advantage of.

Unintended Consequences

- That there is an incentive to commit fraud
- That legitimate claims may be considered fraudulent
- There is a risk that systems to prevent or manage fraud may be complex and difficult to navigate
- That there is a tension that efforts to reduce fraud conflicts with other objectives. An example would include where the scheme causes greater profit for insurers without enabling the premium to represent value for money for the insured and community.

Notes/unresolved aspects

- What 'appropriate benefits' means
 - This could be the amount formally assessed, or something that meets community expectations
- A Product Disclosure Statement is necessary and should be easily available/accessible
- Defined amounts in any lump sum payment for future medical expenses should be placed in a trust by the insurance company to ensure funds are available as intended
- Relates to initial process (using the police as a first point of contact)

